IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 6-2-2002

Coram:

The Honourable Mr.Justice M. KARPAGAVINAYAGAM

CRL.R.C. No.13 of 1998 and Crl.M.P.No.42 of 1998

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M.C.Sharma .. Petitioner

vs.

State by
SPE/CBI/ACB, Madras .. Respondent

Criminal Revision case against the Order dated 24.9.1997 in Crl.M.P.No.536 of 1996 in C.C.No.29 of 1996 on the file of the Special Court for CBI Cases, Madurai.

! For Petitioner : Mr.K.Asokan, S.C.

^ For Respondent : Mr.E.Jacob R.Daniel
Spl.P.P. for CBI Cases.
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: O R D E R

N.C.Sharma, the petitioenr herein, was employed as Collector of Customs and Central Excise, Trichy. A case was registered against him for the offence punishable under Section 13(2) r/w. 13(1)(e) of the Prevention of Corruption Act, 1988 on the allegation that he acquired movable and immovable assets disproportionate to his known sources of income and as on 15.2.1989, he was found in possession of assets and pecuniary resources to the tune of Rs.61,88,114.13 for which he could not satisfactorily account.

2. After finishing investigation and after obtaining sanction, the charge-sheet was filed before the Special Court for

CBI Cases, Madurai in C.C. No.29 of 1996. On behalf of the prosecution, P.W.1 Under Secretary Finance Department was examined through whom Ex.P-1 sanction was marked. After his examination was over, the petitioner filed an application challenging the validity of the sanction order. On hearing the counsel for the petitioners as well as the Special Public Prosecutor for C.B.I. Cases, the Special Court for C.B.I. Cases dismissed the said application. Hence, this revision.

3. Mr.Asokan, the learned senior counsel for the petitioner and Mr. E.Jacob R.Daniel, the learned Special Public Prosecutor for C.B.I. Cases would argue at length pleading their respective submissions in regard to the validity of the sanction and correctness of the impugned order.

4. A case was registered against the petitioner in R.C.No.6(A) of 19 89 for the offences under Sections 13(2) r/w.13(1)(e) of the Prevention of Corruption Act alleging that he acquired assets disproportionate to his known sources of income to the tune of Rs.61,88,114-13 during the said period between 1.1.1985 and 15.2.1989 when he was working as the Collector of Customs and Central Excise, Trichy. On completion of investigation, the C.B.I. Police filed the charge-sheet in the year 1996 before the Special Court for CBI Cases, Madurai.

5. After the cognizance for the offences referred to above was taken by the Special Court, the petitioner, before framing of the charges, filed a petition in Crl.M.P. No.536 of 1996 requesting for discharge on the ground that there is no validity in the sanction to prosecute the petitioner. The said petition was dismissed by the Special Court on the ground that the question of validity of the sanction can be decided at a later stage.

6. Thereafter, after framing the charges, P.W.1 Tarsenlal, Under Secretary, Ministry of Finance, New Delhi, was examined on 9.9.1996 to speak about the sanction and to mark the sanction. After his examination was over, the petitioner filed an application in Crl.M.P.No.536 of 1996 raising the validity of the sanction again on the ground that the said question can be decided on the basis of the evidence available on record adduced by P.W.1.

7. Accordingly, the said application was taken up for enquiry. The Special Public Prosecutor, C.B.I., objected to the maintainability of the said application and made submission with regard to the validity of the sanction. The Special court by order dated 24.9.1997 held that even though raising the question of jurisdiction with regard to the cognizance is maintainable after examination of P.W.1, the cognizance taken by the Special

Court in this case on the basis of Ex.P-1 sanction was a valid one in view of the fact that the sanction marked in this case is proper, as it has been granted by the competent authority.

8. The finding given by the Special Court with regard to the maintainability of the petition, that too,

after the examination of P.W.1 was over has been decided in favour of the petitioner, and as such, we need not go into the said aspect, as no serious objection was raised by the Special Public Prosecutor with regard to the as raised before the trial Court.

9. Therefore, we could straight away go into the merits of the submissions made by the learned senior counsel appearing for the petitioner attacking the reasonings given by the trial Court for the dismissal of his application and the reply submitted by the learned Special Public Prosecutor for the C.B.I. cases.

10. The following are the gist of submissions made by the learned senior counsel for the petitioner: (i) The petitioner/accused who was the then Collector of Customs can be removed only by the President or the Prime Minister in terms of entry 39 in the third schedule as provided under Rule 8 of the Government of India (Transaction of Business) Rules, 1961. In this case, the Finance Minister has granted the sanction. He not being the appointing authority or the authority competent to remove the accused from service would not be competent to sanction the prosecution.

(ii) The notes in the file relating to the sanction in question would reveal that before obtaining the sanction, the proper procedure has not been followed. A note was prepared by the Chief Intelligence Officer on 22.3.1991 and thereafter, the same was routed through the Member (Personnel and Vigilance) and the Chairman, Central Board of Excise and Customs. Then the file was put to the Secretary (Revenue) on 2.4.1991 and the same has been cleared on 3.4.19991. The Finance Minister received it on 4.4.1991 and the Finance Minister has signed it on 5.4.1991. It is essential to obtain the prior advice of the Central Vigilance Commission as pointed out by the note dated 22.3.1991. Even without that, the file was sent to the Finance Minister who in turn signed the same. Only after the issue of the sanction order, the advice was obtained from the Central Vigilance Commission. So, the sanction is not valid.

(iii) P.W.1 has been examined to speak about the fact that he authenticated the above sanction. According to "The Law Lexicon", ' authentication' means an "attestation made by a proper officer by which he certifies that the record is in due

form of law and that the person, who certifies it, is the officer appointed to do so". But, P.W.1 is not the authority duly appointed to authenticate Ex.P-1. P.W.1 would also admit that the concerned file which has to be authenticated was in respect of A(d)(v) Section. P.W.1 was holding charge of A(d)(iv) Section, whereas the matter pertains to A(d)(v) Section. Therefore, the authentication is not legal.

11. In reply to the above submissions, Mr.Jacob R.Daniel, the learned Public Prosecutor, would make the following contentions:-

"The grounds urged by the learned counsel for the petitioner have been clearly explained in the evidence of P.W.1. By virtue of the powers under the Government of India (Transaction of Business) Rules, 196 1 and the Government of India (Allocation of Business) Rules, 1961 framed under Article 77(3) of the Constitution of India, the Finance Minister in the name of the President is the authority competent and empowered to grant sanction for the prosecution of the petitioner, who was the Collector of Customs during the relevant time. As per the Authentication (Orders and other Instruments) Rules framed under Articles 77(2) of the Constitution of India, P.W.1 being the Under Secretary of Finance Department is empowered to authenticate the order of sanction granted by the Finance Minister in the name of the President. The procedures followed by the Office Secretariat, while obtaining the sanction, cannot be said to be invalid and therefore, the impugned order is perfectly justified."

12. I have carefully considered the rival contentions urged by the learned counsel for the parties.

13. The first point urged by the learned senior counsel for the petitioner would relate to the competency of the Finance Minister in regard to the grant of sanction.

14. Clause 3 of the Government of India (Allocation of Business) Rules would throw light to this aspect. This provision would make it clear that the cases to be dealt with by the Prime Minister or the President and the business allotted to the Department under the Government of India Allocation of Business Rules, 1961 can be disposed of by the Minister incharge.

15. In this context, Rules 2 and 3(3) of the Government of India (Allocation of Business) Rules is relevant.

"Rule 2. Allocation of Business-- The business of the Government of India (Allocation of Business) Rules, 1961.

Departments, Secretariats and Offices specified in the First Schedule to these rules (all which are hereinafter referred to as "departments").

Rule 3(3). Distribution of Subjects-- Where sanction for the prosecution of any person for any office is required to be accorded- (a) If he is a Government servant, by the Department which is the Cadre Controlling authority for the service of which he is a member, and in any other case, by the Department in which he was working at the time of commission of the alleged offence. (b) If he is a public servant other than a Government servant, appointed by the Central Government, by the Department administratively concerned with the organisation in which he was working at the time of commission of the alleged offence; and (c) In any other case, by the Department which administers the Act under which the alleged offence is committed."

16. So, the reading of these provisions would make it clear that the business of the Government of India will be transacted in respect of the Ministries and the sanction and prosecution of a Government servant should be accorded by the Department administratively concerned with the organisation in which he was working at the time of commission of the alleged offence.

17. In this case, the file relating to the grant of sanction sent by the Superintendent of the Police, ACB, Chennai was received by the office of the Finance Minister through the Department along with the Chief Vigilance Officer's report dated 22.3.1991. Ultimately, the same was cleared by the Secretary of the Department recommending for prosecution on 3.4.1991 and the same was received by the office of the Finance Minister on 4.4.1991. Ultimately, on 5.4.1991, the Finance Minister signed in the file granting sanction for prosecution.

18. The file and the deposition given by P.W.1 would show that the materials such as F.I.R., statement of the witnesses and documents were enclosed along with the requisition for sanction while it was placed before the Finance Minister.

19. It is true that Sl.No.39 of Schedule 3 to Rule 8 of the Government of India (Transaction of Business) Rules would show that dismissal, removal and disciplinary action would be done by the President or the Prime Minister. This would not apply to the present case as we are only concerned with the sanction for prosecution and not with removal.

20. As indicated above, the power for granting of

sanction is derived by the Finance Minister, namely, the Minister incharge, as provided under Clause 3 of the Government of India (Transaction of Business) Rules and Clause 3(3) of the Government of India (Allocation of Business) Rules.

21. In view of the above, it is not necessary that the sanctio[n has to be granted only by the President in view of the fact that the Minister incharge can grant the sanction in the name of the President. Therefore, the Finance Minister incharge of the Department in which the petitioner was working is competent to grant sanction.

22. In regard to the second point relating to the deviation of procedure, it is to be stated that while granting permission or sanction for prosecution by the sanctioning authority, namely, the Finance Minister, the entire documents collected by the C.B.I. Police during the course of investigation along with the Chief Vigilance commissioner's note and the recommendary note endorsed by the Secretary of the Department were made available in the file. Therefore, it cannot be contended that the Finance Minister without going through the records in the file has merely signed it. P.W.1 would specifically state in his evidence that the Finance Minister has signed only after perusal of the entire records.

23. It is true that the prior advice of the Central Vigilance Commissioner was not obtained while the sanction was granted. But, P.W.1 would state that such advice was obtained from the Central Vigilance Commissioner subsequent to the clearance of the file by the Finance Minister.

24. Getting the advice subsequent to the sanction from the Central Vigilance commissioner would not make the sanction invalid, especially, when the said advice was in consonance with the recommendary note put up by the Chief Vigilance Officer on 22.3.1991 and the further note endorsing the same and recommending the prosecution by the Secretary of the Department on 3.4.1991. Therefore, it cannot be said that the advice would be such that would affect the sanction.

25. The last point would relate to the authentication made by P.W.1 Under Secretary. It is contended that he was not the competent authority to execute Ex.P-1. This contention, on perusal of Ex.P-1 and the evidence of P.W.1 has no basis.

26. In this context, it would be relevant to refer to Section 2 of the Authentication (Orders and other Instruments) Rules, 1958. The said Rules has been framed under Article 77(2) of the Constitution of India. This provision would envisage as follows:-

"Orders and other instruments made and executed in the name of the President shall be authenticated- (1) by the signature of the Secretary, Special Secretary, Additional Secretary, Joint Secretary, Deputy Secretary, Under Secretary or Assistant Secretary to the Government of India."

27. The reading of the above provision would make it clear that the Under Secretary is empowered to authenticate the orders passed by the competent authority, namely, the Minister incharge in the name of the President. 28. As indicated above, the sanction was granted by the Finance Minister as Minister incharge on 5.4.1991 giving permission for prosecution by virtue of the powers conferred to him under Clause 3(3) of the Government of India (Allocation of Business) Rules. 29. When such an order was passed in terms of Clause 3(3) of the Government of India (Allocation of Business) Rules by the Minister incharge in the name of the President as referred to in Rule 2 of the Authentication (Orders and other Instruments) Rules, 1958, then the Under Secretary is authorised to authenticate the said order. 30. There is no dispute in the fact that P.W.1 is the Under Secretary working in the Department concerned and he authenticated the order of the Minister and as such, it cannot be contended that he is not the competent Officer to authenticate. The evidence of P.W.1 would clearly disclose that he authenticated the order passed by the Finance Minister dated 5.4.1991 on 22.1.1992.

31. Merely because P.W.1 would admit in cross-examination that on the date of authentication, the file relating to the sanction was with the A(d)(v) Section, even though he was dealing with the A(d)(iv) Section, he was asked to handle the file relating to A(d)(v) Section, it is seriously contended that he was not the competent Officer to to authenticate.

32. It is the specific evidence of P.W.1 in cross-examination that when he was dealing with the file relating to A(d)(iv) Section, he was asked to take the file of A(d)(v) Section also, since the Under Secretary in respect of that Section was on leave and therefore, he dealt with the file and authenticated the file as Under Secretary.

33. Clause 2 of the Authentication (Orders and other Instruments) Rules, 1958 would provide for the authentication by the under Secretary. It is not disclosed that only a particular Under Secretary would deal with a particular Section. P.W.1 would also state in the crossexamination that he took charge of A(d)(v) Section also and dealt with the file in question and authenticated the sanction.

34. In these circumstances, it is idle to contend that

P.W.1 would not be competent to authenticate. The order granting sanction was passed by the Minister incharge of the Department in the name of the President. Therefore, the authenticity of the authentication made by P.W.1, the competent Officer, cannot also be questioned, in view of the fact that the Under Secretaries are competent to authenticate by virtue of the above provision. As such, it has to be held that the authentication has been done by P.W.1 Officer who is competent to certify the records.

35. In the light of the discussion made above, it has to be concluded that the order passed by the Special Court holding that the sanction is valid and proper would not suffer from any infirmity.

36. In this case, as noted above, the trial started on 9.9.1996 itself. The application questioning the validity of the sanction was filed in the same year. The Special Court dismissed the said application on 24.9.1997. Challenging the same, this revision has been filed before this Court and notice of motion was ordered on 8.1.1998. However, during the pendency of the revision, stay was not granted and by order dated 5.10.1998, this Court called for the file relating to the sanction alone from the trial Court and directed the trial Court to proceed with the trial. Now, it is pointed out that 23 witnesses have been examined. So, in view of the finding arrived at regarding the validity of the sanction, the trial Court can dispose of the main case as expeditiously as possible.

37. In the result, the Criminal Revision Case is dismissed as devoid of merits. Consequently, Crl.M.P.No.42 of 1998 is also closed.

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